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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 833

W. L. SANDSTROM,

Petitioner,

vs.

CALIFORNIA HORSE RACING BOARD AND LOYD WRIGHT, DWIGHT D. MURPHY AND NION R. TUCKER, MEMBERS OF THE CALIFORNIA HORSE RACING BOARD,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

W. L. Sandstrom respectfully petitions, by his counsel, Joseph Scott, for a writ of certiorari to review a decision of the Supreme Court of the State of California, 31 Advance California Reports 410, and 189 Pac. (2d) 17, rendered February 3, 1948 (rehearing denied March 1, 1948), which reversed a judgment of the Superior Court of the State of California, in and for the County of Los Angeles,

ordering the issuance of a peremptory writ of mandate to compel respondents to cancel an order suspending petitioner's license to train race horses.

A

Summary Statement of the Matter Involved

Petitioner was a trainer of race horses, duly licensed by respondent board, which agency was created by a State statute ("Horse Racing Act," Cal. Stats., 1933, p. 2046). The Act expressly provided that the legislation in question should become effective only when the people ratified a constitutional amendment approving the same. Subsequently, the California Constitution was so amended (Sec. 25a, Art. IV, California Constitution). The Act further provided, among other things, that the license of a trainer should not "be revoked without just cause."

Rule 313, one of the rules and regulations thereafter promulgated by respondent board, provides that "The Trainer shall be the absolute insurer for the responsibility of the condition of the horse entered in the race, regardless of the acts of third parties."[1]

The urinalysis of a petitioner-trained horse, taken after the running of a scheduled race, disclosed the presence of a stimulant. After a hearing at which he was present, petitioner's license was suspended by virtue of the aforesaid Rule 313, although no evidence had been educed showing that petitioner, personally or through an agent or employee, had any knowledge of, or had in any way caused, or had anything to do with, the stimulating of the horse, or that he had been careless, negligent or indifferent in protecting the condition of the horse.

The trial court ordered petitioner's license to be restored, holding that Rule 313 was arbitrary, unreasonable and

[1] The full text of Rule 313 is in the record (R. 6).

capricious (R. 12). The California Supreme Court reversed the trial court, invoking the doctrine of "strict responsibility," and holding that Rule 313 was constitutional (R. 41-43).

B

Statement Disclosing Basis of Jurisdiction

I

1. Appellate jurisdiction is claimed under Section 237 (b) of the United States Judicial Code, as amended by the Acts of February 13, 1935, Ch. 295, 43 Stat. 937.

2. The judgment of the Supreme Court of California was entered February 3, 1948 (R. 38). Petition for rehearing, timely filed, was denied March 1, 1948 (R. 62).

II

The Administrative Regulation, the Validity of Which Is Involved

Involved herein is Rule 313 of the California Horse Racing Board, promulgated by that agency pursuant to the "Horse Racing Act" (Cal. Stats., 1933, p. 2046), which in turn was enacted for the purpose of regulating, licensing and supervising horse racing and wagering thereon.

By the aforesaid Act there was delegated to respondent board, among other things, "full power to prescribe rules, regulations and conditions under which all horse races, upon the results of which there shall be wagering, shall be conducted."

The Act expressly provided that the license of a trainer shall not "be revoked without just cause."

III

The Nature of the Case

The nature of the case has been stated (*ante*, page 2). In the trial court petitioner asserted that Rule 313 was arbitrary, unreasonable and capricious, and therefore unconstitutional (R. 2). These contentions were sustained by the trial court (R. 12). Upon appeal by the Board to the District Court of Appeal of California, the judgment of the trial court was reversed with directions (183 Pac. (2d) 285). Petitioner then sought a hearing in the California Supreme Court, renewing his contention that Rule 313 was arbitrary, unreasonable and capricious, and that its provisions violated the Fourteenth Amendment of the United States Constitution, and denied equal protection and due process of law. Upon taking jurisdiction of the cause (R. 37), the California Supreme Court held that Rule 313 did not violate the Fourteenth Amendment and reversed the judgment of the trial court (R. 49). There were two dissenting opinions (R. 50-62).

The conclusion of the California Supreme Court that the rule in question is neither unreasonable nor a denial of due process or equal protection of the law presents for determination a substantial Federal question relating to the extent of the authority exercised by a Statewide administrative agency. The criteria established by the Supreme Court of California and the application thereof to the rule in question are at variance with principles announced by this Court.

The following cases are believed to sustain jurisdiction:

Hamilton v. *Regents of University of California*, 293 U. S. 245, at 257 and 258;

New York ex rel. Bryant v. *Zimmerman*, 278 U. S. 63, at 67;

Whitney v. *California*, 274 U. S. 357, at 360.

C

The Question Presented

Broadly stated, the question presented is this:

Is Rule 313 of respondent board arbitrary, unreasonable and capricious, and therefore violative of equal protection and due process of law guaranteed by the Fourteenth Amendment?[2]

Stated more specifically:

1. Does Rule 313 of the California Horse Racing Board unconstitutionally deprive petitioner of equal protection and due process of law by denying a full hearing and a fair opportunity to rebut the charges against him?

2. May a legislative administrative board of Statewide jurisdiction, by a rule of its own promulgation, constitutionally impose upon a licensed race horse trainer absolute, or "strict" liability for the condition of a race horse when the trainer is without fault, guilty knowledge, participation, or culpable negligence or indifference?

3. Is Rule 313 *ultra vires* when the statute creating respondent board expressly provided that the license of a trainer shall not "be revoked without just cause"?

4. Does Rule 313 unconstitutionally set up a conclusive presumption?

D

Reason Relied on for the Allowance of the Writ

1. The due process clause of the Fourteenth Amendment sets limits upon the power of a State legislature and its creature agencies to make proof of one fact or group

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[2] *Manley* v. *Georgia*, 279 U. S. 1, 7;
McFarland v. *American Sugar Ref. Co.*, 241 U. S. 79, 86;
Morgan v. *United States*, 304 U. S. 1.

of facts conclusive and irrebutable evidence of the existence of the ultimate fact on which guilt is predicated; if there be no rational connection between a proven fact and the ultimate fact conclusively presumed therefrom, the statute or administrative regulation is arbitrary and denies the due process of law guaranteed by the Fourteenth Amendment. *Tot* v. *United States,* 319 U. S. 463, 467; *Morrison* v. *California,* 291 U. S. 82; *Western & A. R. Co.* v. *Henderson,* 279 U. S. 639; *McFarland* v. *American Sugar Ref. Co.,* 241 U. S. 79.

2. The criterion applied in the State court in holding the rule to be constitutional is that "by express language the rule imposes strict liability for the condition of the horse" (R. 44). The State court relied on *City of Chicago* v. *Sturges,* 222 U. S. 313 (R. 41). Assuming the correctness of the test adopted, this Court nevertheless will inquire whether the test, as applied, denied the rights safeguarded by the Fourteenth Amendment.[3]

3. The "strict responsibility" test unduly restricts vital constitutional rights and privileges. The proper criterion is the "rational connection" test announced in *Mobile J. & K. C. Co.* v. *Turnipseed,* 219 U. S. 35, 43, and followed in *McFarland* v. *American Sugar Ref. Co.,* 241 U. S. 79, 86; *Manley* v. *Georgia,* 279 U. S. 1; and *Tot* v. *United States,* 319 U. S. 463. The State Supreme Court rejected this test and referred to *City of Chicago* v. *Sturges, supra,* in support thereof (R. 41). This Court should declare whether or not the "strict responsibility" test may be invoked to punish a licensee of a Statewide administrative agency in the complete absence of any showing that he had knowledge, personally or vicariously, of the prohibited act.

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[3] *Nebbia* v. *New York,* 291 U. S. 502.

4. The ruling of the California Supreme Court conflicts with the conclusions reached by the appellate courts of Maryland, Florida and New York in the following cases:

Mahoney v. *Byers* (Md.), 48 A. (2d) 600;
State v. *Baldwin* (Fla.), 31 So. (2d) 627;
Smith v. *Cole*, 62 NYS (2d) 226.

These decisions all dealt with rules identical or similar to the rule in question. In view of the importance of the problem presented, it is necessary that this Court announce the criterion governing the right of a Statewide agency to control the activities of an occupation over which it has jurisdiction.

WHEREFORE, your petitioner prays that a Writ of Certiorari issue under the seal of this Court, directed to the Supreme Court of the State of California, to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment herein of said Supreme Court of the State of California be reversed by this Court; and for such other and further relief as to this Court may seem proper.

W. L. SANDSTROM,
Petitioner;

By JOSEPH SCOTT,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 833

W. L. SANDSTROM,

Petitioner,

vs.

CALIFORNIA HORSE RACING BOARD AND LOYD WRIGHT, DWIGHT D. MURPHY AND NION R. TUCKER, MEMBERS OF THE CALIFORNIA HORSE RACING BOARD,

Respondents

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinions Below

The majority opinion of the Supreme Court of California (R. 38-49) is reported in 31 Advance California Reports 410, and 189 Pac. (2d) 17. The dissenting opinions are reported in 31 Advance California Reports 422 *et seq.* There is an unreported opinion of the trial judge (R. 31-33).

II

Jurisdiction

The basis of jurisdiction is given under the heading "B" in the Petition for Writ of Certiorari (*ante*, page 3), and in the interest of brevity is incorporated herein by reference.

III

Summary Statement

A summary statement of the case appears under the heading "A" in the Petition for Writ of Certiorari (*ante*, page 2, and in the interest of brevity is incorporated herein by reference. A more extended statement appears in the argument (*post*, page 11).

IV

Specification of Errors

The California Supreme Court erred in ruling that:

1. Rule 313 of the California Horse Racing Board is constitutional.

2. The imposition by Rule 313 of strict liability is a valid exercise of the police power.

3. The legislature constitutionally delegated to the California Horse Racing Board the legislative power to enact Rule 313.

4. Rule 313 does not establish a conclusive presumption.

V

ARGUMENT

Summary of the Argument

Point 1

Rule 313 of the California Horse Racing Board violates the Fourteenth Amendment's guarantee of equal protection

and due process of law by denying a full hearing and a fair opportunity to rebut the charges made.

Point 2

A rule of a legislative administrative agency is an unconstitutional attempt to create a conclusive presumption when it substitutes an irrebutable presumption for facts necessary to show guilt, and precludes a party from showing the truth by making evidence conclusive which is not so by its nature.

Point 3

A legislative administrative agency cannot constitutionally impose absolute liability upon one without fault or blame, by exercising legislative powers which have not been granted, or which have been denied to it.

Point 1

Rule 313 of the California Horse Racing Board violates the Fourteenth Amendment's guarantee of equal protection and due process of law by denying a full hearing and a fair opportunity to rebut the charges made.

Early in 1933, the California Legislature adopted the Horse Racing Act[4] legalizing betting on horse racing. The Act itself expressly provided that it was to become effective only when ratified by constitutional amendment.

Subsequently, the constitution was so amended by the adoption of Section 25a, Article IV, which reads as follows:

> "The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results thereof. The provisions of an act entitled 'An act to provide for the regulation and licensing of horse racing, horse racing meetings, and the wager-

[4] Calif. Stats. 1933, p. 2046.

ing on the results thereof; to create the California Horse Racing Board for the regulation, licensing and supervision of said horse racing and wagering thereon; to provide penalties for the violation of the provisions of this act, and to provide that this act shall take effect upon the adoption of a constitutional amendment ratifying its provisions,' are hereby confirmed, ratified, and declared to be fully and completely effective; provided, that said act may at any time be amended or repealed by the Legislature."

The provisions of the Horse Racing Acts, and amendments thereto, have been codified by statute in the Business and Professions Code of the State of California. The pertinent code provisions are as follows:

"The board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter.[5]

"All licenses, granted under this chapter are subject to all rules, regulations and conditions from time to time prescribed by the board and shall contain such conditions as are deemed necessary or desirable by the board for the purposes of this chapter.[6]

"No qualified person shall be refused a license under this article nor shall a license be revoked without just cause.[7]

"The board may prescribe rules, regulations and conditions consistent with the provisions of this chapter under which all horse races, upon the results of which there is wagering, shall be conducted within the State."[8]

Rule 313 of the California Horse Racing Board, in its applicable parts, reads as follows:

"The Trainer shall be the absolute insurer of and responsible for the condition of the horses entered in a

[5] Bus. & Prof. Code, Sec. 19420.
[6] Bus. & Prof. Code, Sec. 19460.
[7] Bus. & Prof. Code, Sec. 19513.
[8] Bus. & Prof. Code, Sec. 19561.

race, regardless of the acts of third parties. Should . . . analysis . . . prove positive showing the presence of any narcotic . . . the Trainer of the horse may be suspended or ruled off . . ."

The evidence educed at the hearing herein before the California Horse Racing Board established only the following facts:

1. Petitioner was a duly licensed trainer of a race horse entered in a race on which there was wagering.

2. After the race, the horse was found to have been stimulated by a caffeine type alkaloid.

No evidence was educed that petitioner or any of his agents or employees had any knowledge of or in any way had caused or had anything to do with the stimulating of the horse; or that he or his agents and employees had been careless, negligent or indifferent in protecting the condition of the horse. This is conceded by the California Supreme Court (R. 46-47), which predicates liability herein as follows:

> "Two factual elements must exist to bring the rule into operation; first, the licensee must be the trainer of the horse, and secondly, the analysis must show the presence of a stimulating or depressive drug or chemical . . . (R. 41). Fault in the sense of actual administration of the drug or negligent care by the trainer is neither the basis nor an element of liability. It may not be injected into the case by way of subtle hypothesis. Whether the trainer drugged the horse or knew that it was drugged, or was negligent in not properly seeing that the horse was not drugged are not elements of liability." (R. 44)

The dissenting opinion of Mr. Justice Carter most effectively points out the untenable position taken by the majority opinion (R. 51);

> "The majority opinion sustains as valid a rule of the California Horse Racing Board which imposes

liability without culpability—guilt without fault or knowledge that a wrong had been perpetrated or that the rule had been violated. Under this rule an innocent person may be condemned and punished without evidence that he did, or intended to do, or permitted to be done, any wrong whatsoever. In fact, this result could be obtained even if it were conclusively shown that such innocent person did everything possible to prevent the violation of such rule or was overpowered by a wrongdoer and rendered helpless while the unlawful act was being consummated. The exercise of vigilance, diligence, care, precaution and fidelity to duty honestly and faithfully performed is of no avail. The suspended axe falls and the innocent victim is decapitated. 'Oh! (justice), what crimes are committed in thy name.'

"In overruling the demurrer interposed by the California Horse Racing Board to the petitioner's petition in the trial court, the learned judge made the following comment:

"'. . . This Rule as written deprives the licensee in question of any possible defense to an attempt or threat of the Board to suspend his license once the presence of the proscribed narcotic was established. To deprive the trainer of his license under such circumstances would not be founded upon "just cause," and for that reason, the Rule as construed and applied by the Board in this case is arbitrary, unreasonable and capricious, and inconsistent with the provisions of the chapter on Horse Racing, particularly sections 19512 and 19513.'"

Continuing, the dissenting justice says (R. 52):

"In my opinion rule 313, as here applied, violates every precept of justice as established by the Constitution and laws of the United States and this State. It is unconstitutional and out of harmony with the American system of justice, and may appropriately be labeled as 'unamerican.' It cannot stand in the face of the long line of decisions of the Supreme Court of the United States which denounces such strictures on jus-

tice as a violation of the due process provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States. (*Tot* v. *United States*, 319 U. S. 463 (63 S. Ct. 1241, 87 L. Ed. 1519); *Mobile J. & K. C. R. Co.* v. *Turnipseed*, 219 U. S. 35 (31 S. Ct. 136, 55 L. Ed. 78); *Bailey* v. *Alabama*, 219 U. S. 219 (31 S. Ct. 145, 55 L. Ed. 191); *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61 (31 S. Ct. 337, 55 L. Ed. 369); *Luria* v. *United States*, 231 U. S. 9 (34 S. Ct. 10, 58 L. Ed. 101); *McFarland* v. *American Sugar Ref. Co.*, 241 U. S. 79 (36 S. Ct. 498, 60 L. Ed. 899); *Manley* v. *Georgia*, 279 U. S. 1 (49 S. Ct. 215, 73 L. Ed. 575); *Western & Atlantic R. R. Co.* v. *Henderson*, 279 U. S. 639 (49 S. Ct. 445, 73 L. Ed. 884); *Morrison* v. *California*, 291 U. S. 82 (54 S. Ct. 281, 78 L. Ed. 664).)" (Emphasis supplied)

Point 2

A rule of a legislative administrative agency is an unconstitutional attempt to create a conclusive presumption when it substitutes an irrebutable presumption for facts necessary to show guilt, and precludes a party from showing the truth by making evidence conclusive which is not so by its nature.

Rule 313 makes a trainer "the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties" (R. 6).

In effect, Rule 313 by fiat says that if a horse is found to have been drugged it will be conclusively presumed that the trainer was responsible therefor.

A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the due process clause of the Fourteenth Amendment. Mere legislative fiat may not take the place of fact.[9]

The due process clauses of the Fifth and Fourteenth Amendments set limits upon the power of Congress or

[9] *Manley* v. *Georgia*, 279 U. S. 1.

that of a State legislature to make the proof of one fact or group of facts evidence of the existence of the ultimate fact on which guilt is predicated. A statutory presumption cannot be sustained if there is no rational connection between the fact proved and the fact presumed.[10]

The Florida Supreme Court held an identically worded rule of the Florida Racing Commission to be an unconstitutional denial of due process.[11] Similarly worded rules were likewise held unconstitutional in New York[12] and Maryland.[13]

The inevitable effect on Rule 313 is that of an unconstitutional conclusive presumption. The State legislature itself could not by statute establish such a conclusive presumption, and certainly an attempt by an administrative agency to do so can amount to no more than an abortive attempt to circumvent the mandate of the Fourteenth Amendment, and is subject to review by this Court if the guarantee of due process and equal protection of law is to be preserved.

Point 3

A legislative administrative agency cannot constitutionally impose absolute liability upon one without fault or blame, by exercising legislative powers which have not been granted, or which have been denied to it.

This argument is not based upon any claim of unlawful delegation of legislative power.[14] It is solely premised upon the unassailable proposition that it is a denial of due process of law for an administrative agency to exercise a

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[10] *Tot* v. *United States*, 319 U. S. 463, 467;
McFarland v. *American Sugar Refining Co.*, 241 U. S. 79, 86;
Morrison v. *California*, 291 U. S. 82;
Heiner v. *Donnan*, 285 U. S. 312.

[11] *Florida ex rel. Paoli* v. *Baldwin*, — Fla. —, 31 So. (2d) 627.

[12] *Smith* v. *Cole*, 270 App. Div. 675, 62 N. Y. S. (2d) 226.

[13] *Mahoney* v. *Byers*, — Md. —, 48 A. (2d) 600.

[14] *Highland Farms Dairy* v. *Agnew*, 300 U. S. 608.

legislative power not only never granted, but in fact expressly denied to it. Thus, the legislative act which created respondent board expressly prohibited the revocation of a trainer's license "without just cause."[15]

A "just cause" necessarily is a fair and reasonable cause and there must be some rationally attributable fault or blame. Rule 313 of respondent board violates the Fourteenth Amendment because it authorizes the revocation of a trainer's license not only "without just cause," but even without fault, participation, guilty knowledge, negligence or culpable indifference. In fact, were a trainer to be gagged and bound and rendered physically helpless to prevent the drugging of a race horse in his care, the provisions of Rule 313 would make his license revocable.

The imposition of strict or absolute liability, even by statute, is an extraordinary exercise of the police power and a State legislature itself ordinarily can impose such liability only when there is some factual reason for attributing fault or blame. For a legislative administrative agency to impose strict liability by its own fiat would be most extraordinary even if the most plenary of police powers were delegated to it.

Not only was respondent board not delegated this plenary police power legislative authority, but such authority was expressly denied to it by the statutory limitation that a license may not be revoked "without just cause."

The exercise of police power must be reasonable and not capricious or arbitrary, and this restraint imposed upon legislation by the due process clauses of the Fifth and Fourteenth Amendments is the same.[16]

Rule 313 is patently an arbitrary usurpation of power and hence unconstitutional.[17]

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[15] *Bus. & Prof. Code*, sec. 19513, supra.
[16] *Heiner* v. *Donnan*, 285 U. S. 312; *Coolidge* v. *Long*, 282 U. S. 58.
[17] *Lemieux* v. *Young*, 211 U. S. 489; *Booth* v. *Illinois*, 184 U. S. 425.

Conclusion

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari should be granted.

JOSEPH SCOTT,
Counsel for Petitioner.

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